

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

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CLERK U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JONATHAN J. POLLARD

Criminal No. 86-0207
(Redacted)

DEFENDANT JONATHAN J. POLLARD'S SECOND MEMORANDUM
IN AID OF SENTENCING

I. Introduction

Defendant, Jonathan J. Pollard, by counsel, respectfully submits this memorandum in aid of sentencing by the Court. Pursuant to an agreement, Mr. Pollard pled guilty to a single violation of 18 U.S.C. § 794(c), the penalty for which may range from any term of years to life imprisonment and/or a fine up to \$250,000.

Mr. Pollard previously submitted for the Court's review a statement written entirely by him (and typed for the Court's convenience) explaining his personal background, motivations for delivering information to Israel, and his current feelings toward the crime he committed. An unclassified version of the statement has been filed with the Court as well. Mr. Pollard also submits herewith for the Court's review this classified memorandum containing a detailed explanation of the nature of the documents allegedly compromised by Mr. Pollard, an analysis of the Government's claim of the damage to the United States caused by his actions, and a refutation of several points raised in the Government's memoranda.

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II. Damage to the United States

A. Introduction

Perhaps the critical issue in the Court's determination of an appropriate sentence for Mr. Pollard is the extent to which his conduct damaged the interests of the United States. In recognition of the importance of the damage issue, the United States has not only devoted a section of its public sentencing memorandum to a discussion of the alleged damage caused by him, but it also has filed a supplement to the memorandum elaborating on its contentions and has submitted an affidavit by the Secretary of Defense purportedly detailing the damage assessment.

While it is proper, indeed, obligatory, that the United States set forth its views regarding damage inflicted by Mr. Pollard's conduct, Mr. Pollard expected that the opinions expressed would be succinct, objective, and relevant. Instead, the United States has filed a blizzard of contentions notable for the emphasis on the phrases "may have," "could have," and "possibly has."

The damage assessment¹ in this case fails to establish the fact of injury in such a way as to justify substantial

¹The Weinberger affidavit must be recognized as not having been written by the Secretary of Defense. In the true spirit of overkill that characterizes the Government's assessment of damage in this case, the attempt to make more out of what is the real injury to the national security is demonstrated by this technique of having the Secretary sign the affidavit rather than the true author(s). In a pending espionage prosecution in the Eastern District of Virginia, in which the undersigned are also counsel, the damage assessments in that case were not signed by the
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incarceration for Mr. Pollard. As presented, it is an overstated polemic of the evidence one expects to find in a case of espionage. Instead of concentrating on the actual damage to U.S. national interests, the United States has engaged in unbridled speculation on the potential damage. While this speculation would be germane if Mr. Pollard had only been apprehended yesterday, over fifteen months have elapsed since his arrest. During that time, the United States has debriefed him extensively, conducted exhaustive reviews of the documents delivered by him to the Israelis, and had the opportunity to observe any material alteration of the relationships between it and the Government of Israel, allied nations and friendly Arab nations. The United States should have developed a concrete assessment of the damage by now, thereby obviating the need for any speculation. The United States' reliance on speculation therefore underscores the tenuousness of its claims.

3. There Was No Disclosure to the Enemy

In the first place, no injury is demonstrated in the same way as in the case of unauthorized disclosures to a hostile nation. This point comes home only when a comparison is made between which the Government asserted to be the injury to our national security in such celebrated recent cases as Walker, Pelton, and Morison. In each of those prosecutions, the injury

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Secretary of Defense. The point is noted here because this Court should not be bulldozed into not considering a challenge to a document just because it was signed by a cabinet secretary.

to the United States was painfully clear: the Soviets received the classified materials.² The result was that sources of information were compromised, secret methods of collection exposed, and locations of equipment and personnel revealed. Since the U.S. intelligence effort is directed primarily at the Soviet Union, these repercussions meant basically that the United States had to start over to reestablish a collection network. Accordingly, the United States was required to establish new communications links, methods and channels, to replace lost equipment and personnel, to find new intercept sites, and to develop new technology to circumvent Soviet defenses or interference.

The Government has argued that the sheer volume of the information provided has made this one of the worst espionage cases in U.S. history. Again, this pandering simply fails to recognize the most salient of all facts in the case: the enemy

²There is nothing in the damage assessment that speaks of damage to our national security in terms of our position vis-a-vis the Soviets. The first occasion where such a claim arises is in the Government's opposition to Mr. Pollard's recently-denied Motion for Production of Evidence Favorable to the Accused. Since the allegation was made and because of its incendiary nature, it is important to focus on it in order to point out that there is simply no basis in the evidence for it.

The only reference in the damage assessment to the Soviet Union regards the danger of a Soviet mole in Israeli intelligence. That issue is treated infra.

Unless the government is sandbagging everyone by bringing in such proof in "rebuttal," the record as it stands merely speculates, without any proof, that somehow our national security vis-a-vis Russia potentially has been damaged. To state this, without more, is overkill and exploitive of a situation in which the Government holds every advantage and the defendant has no opportunity for rebuttal.

was not the recipient of the information. Volume per se is irrelevant if it is not reflective of injury. As an example, in U.S. v. Morison, United States District Court for the District of Maryland, the defendant was convicted and sentenced to 3 years in jail for having supplied Jane's Defense Weekly with a satellite photograph of a Soviet ship under construction. Mr. Pollard participated in the damage assessment for the Morison case.

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Thus, the volume of the compromised information meant nothing; it was the Soviets' possession of it that created the injury to our national security.

In this case, no such allegation of such damage is made or proof offered. Secretary Weinberger nowhere alleges that the United States has lost the lives or utility of any agents, that it has been obligated to replace or relocate intelligence equipment, that it had to alter communication signals, or that it has lost other sources of information, or that our technology has been compromised. Indeed, the memorandum only discusses the possibility that sources may be compromised in the future, thus requiring countermeasures. The absence of any countermeasures taken in the aftermath of Mr. Pollard's conduct therefore is perhaps the truest barometer of the actual damage, or absence thereof, to the national security.

Consequently, the methodology of this damage assessment is seriously flawed for lack of a "clincher." Its focus on damage

is not in the compromise of the substantive information but rather on the intangible, unproven speculation that we shall be unable to negotiate effectively with the Government of Israel over intelligence sharing for some time. One may assume that if there were evidence of this, it would be presented in these papers. Certainly, after the passage of 18 months since the Israelis began receiving information from Mr. Pollard, such a development would have surfaced by now--if it in fact has happened; it has not.

C. The Political Impact

The speculation, in the absence of hard evidence, extends to the Secretary's concern about our allies. Again, there is no showing of any adverse fallout with our allies from these disclosures. Again, with so many months having passed since this case broke, it is reasonable to expect evidence of this adversity and not someone's theoretical notion that it could happen.

Even the political argument is questionable. Is the Israeli Tunis raid different from the U.S. raid on Tripoli? It is not fair or accurate to distinguish the two on the basis of our friendship with Tunisia versus our enmity with Libya. Each was a violation of sovereign territory. Each was carried out for the same purpose: to retaliate against terrorists in their known locations. Each was praised by our President as responsible reactions to terrorism. After 15 months, since Mr. Pollard's arrest, our relations with each of those countries has not changed. Therefore, the Secretary's policy analysis is less an

analysis and more a convenient theory of injury which bears no relation to reality.

D. Israel's Intent in Receiving Classified Information

By the same token, fears about what Israel might do with this information by sharing it with third countries, are completely unfounded, unless, of course, the Secretary is willing to state that information Israel has lawfully received is also subject to improper sharing. If that is the case, the danger here is not peculiar to the compromised information; it extends to all of it--compromised and uncompromised alike.

The heinousness of any espionage must take into account the intent of the recipient of the classified information to harm the United States. There is no evidence in the damage assessment of Israel's intent to injure the United States by reason of its having illegally received the classified information from Mr. Pollard. Israel is simply not the enemy--it is not the Soviet Union--it is not a Warsaw Pact nation--it is not China--it is not even India. Israel, as it has been pointed out, enjoys a "special relationship" with the United States. It is our staunch, steadfast ally. The worst that has been said about our loss in this case is that our negotiating posture in near term intelligence exchanges might be jeopardized (although after 15 months no evidence of this appears).

There is more psychology at work here than there is injury. Notoriety is the direct result of the much-debated, discussed, and analyzed phenomenon of how loyal Jewish-Americans can serve the ideal of supporting the Jewish State without doing violence

to their allegiance to the United States. Mr. Pollard failed to maintain that intellectual and spiritual balance that Jewish-Americans strive to maintain between their love for Israel and their loyalty to the United States. For his actions as a result thereof, he must be accountable to our laws.

E. Relationship between the United States and Israel

Just as a man who strikes another suffers varying degrees of punishment depending on whether the victim lives or dies, so should Mr. Pollard be sentenced on the basis of the damage he caused to the security of the United States. It is clear that punishment must be imposed in the form of incarceration but that does not mean it should be done without regard to the actual harm suffered by the United States in this case. Accordingly, the one point which he asks the Court never to lose sight of is that the country to which he passed classified information was not the Soviet Union. Instead, the recipient of the information is probably one of the closest, if not the closest, ally of the United States. Since Israel's formal establishment in 1948, the United States has provided substantial assistance to it, in the form of military hardware, financial aid, and intelligence information. Even though the United States has never committed formally to defending Israel from aggression, a cornerstone of U.S. foreign policy for almost forty years has been a self-imposed duty to ensure the survival of that nation. To that end, Israel remains the largest recipient of U.S. military equipment and financial aid, even though it is a diminutive country both in size and population.

The relationship between the United States and Israel is not exclusively that of donor-donee. The United States' commitment to the survival of Israel is not entirely a product of altruism. The United States does have a natural sympathy towards Israel because it is the only stable democracy in the Middle East, and because it is surrounded by hostile enemies with larger populations and resources, whom it nevertheless defeated in three wars. However, Israel also has undertaken operations from which the United States derived substantial benefit. In past years, Israel has frustrated numerous terrorist activities against U.S. targets and provided information to be used in U.S. intelligence activities or actions against terrorism.

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Israel has also acted on the United States' behalf when direct U.S. involvement would be politically impossible or detrimental to U.S. foreign policy. For instance, when the United States normalized relations with the People's Republic of China in 1978, the PRC insisted that the U.S. diminish its arms sales to Taiwan. The United States ended direct sales to Taiwan, but Israel, with the encouragement of the United States, became the new supplier of U.S. arms. More recently, the media has been

detailing Israel's covert role as a broker of U.S. arms sales to Iran.

Given this extensive and intimate relationship between Israel and the United States, it should not be surprising that the Israeli and U.S. Governments have entered into formal agreements for the exchange of intelligence information. Secretary Weinberger's affidavit admits that pursuant to these agreements a large quantity of intelligence information, much of it highly classified, is disclosed as a matter of policy to the Israelis. Secretary Weinberger insists, however, that the information passed by Mr. Pollard to Israel exceeds the scope of the exchange agreements.

F. Criteria for Dissemination of Information to Israel

An inspection of the criteria the Secretary listed in gauging what information could be disseminated to the Israelis shows that, contrary to Secretary Weinberger's claims, the information Mr. Pollard passed to the Israelis does not undisputedly fall outside those criteria. Secretary Weinberger identifies six criteria used in making the determination whether to share information.

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³ Secretary Weinberger also laments the possibility that Mr. Pollard could have been a victim of a "false flag" operation. A "false flag" is a situation where the offender is duped into believing that he is giving information to a perfectly benevolent recipient when in fact the ultimate recipient is the enemy. It is true that a "false flag" can operate in every espionage; however, it should also be factored into the question of punishment that there was no "false flag" here. Again, we reiterate that the Court should assess the actual damage, not what it could have done. All the indicia of the "flag" pointed squarely to Israel and nothing in Mr. Pollard's experience belied that. Thus, Mr. Pollard knew then Colonel--now General--Avi Sella to be an Israeli military hero who led the bombing raid on the Iraqi nuclear reactor site in 1981. While residing in New York, Sella's wife was nationally active in the Anti-Defamation

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League. In addition, Sella provided Mr. Pollard the entree to Yossi Yagur and Erit Erb, who became his long-term handlers. Most significantly, he met at length with Rafael Eitan, the ultimate controller of the operation, the man who "captured" Adolf Eichmann. Throughout the course of his operation, Mr. Pollard questioned all of these individuals at length to satisfy his curiosity, and to establish their bona fides. Even the best trained agents could not have known the details or events on which these individuals were quizzed. The specter of a "false flag" was, in reality, therefore, non-existent.

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Secretary Weinberger repeatedly contends that the information given to the Israelis by Mr. Pollard has damaged U.S. interests in the Middle East. While Mr. Pollard and his counsel lack access to information necessary to refute all of Secretary Weinberger's assertions, some of the assertions are contrary even to established viewpoints in the intelligence community. For instance, Secretary Weinberger insists that a stronger Israel upsets the balance of power in the Middle East and therefore makes armed conflict more likely. If the United States truly believed that, it would not provide Israel with the most sophisticated military equipment and generous foreign aid. Instead, one of the bulwarks of U.S. policy in the Middle East is to ensure that Israel maintains a clear military superiority in the region. As stated in a classified report titled "The Arab-Israeli Military Balance," prepared by the U.S. intelligence community, "the United States sells some of its best and most advanced equipment to Israel on a

timely basis, occasionally even before some US forces receive it." Id. at 9. The unqualified support which the United States displays for Israel reflects in part a realization that Israel would not initiate a war simply because it thinks it has a military advantage over its enemies. To the contrary, with the knowledge of military superiority, Israel would not experience the insecurity which fuels wars in the Middle East.

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Secretary Weinberger attempts to refute his own employees' analysis of the above-described political reality in the Middle East by pointing to the Tunis raid as an example of Israeli aggressiveness prompted by a clear military advantage over its enemies. Secretary Weinberger misses one key distinction. The raid on Tunis was not directed against Tunisia, but was a surgical strike aimed at a terrorist organization. While relations with Tunisia may have been ruffled over the attack (though there was no rupture of ties), it is interesting that President Reagan, architect of U.S. foreign policy, stated immediately after the raid that other nations have the right to strike at terrorists "if they can pick out the people

responsible." World News Digest, October 4, 1985.⁴ In addition, the strike was not a product of new-found intelligence data supplied by Mr. Pollard, but rather reflected an application of Israel's consistent policy of retaliating for terrorist actions against its nationals. Accordingly, the information which Mr. Pollard supplied undoubtedly furthered the attack, but it did not induce it. Indeed, the information most likely minimized the loss of Israeli and Tunisian lives, which would be in the best interests of U.S. policy, by permitting a more accurate attack against the PLO headquarters.

G. Damage to Relations with Friendly Arab Countries

Secretary Weinberger's second contention is that U.S. relations with friendly Arab countries have been damaged.

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The Israelis assuredly realize that disclosure of the extent of the information received from Mr. Pollard will jeopardize the advantage which the information gives them over their present or potential enemies, since it would spur the enemies to take effective countermeasures.

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⁴When questioned by reporters on how the Israelis were certain that they were striking at PLO members, rather than Tunisian civilians, President Reagan replied, "I have always had great faith in their intelligence." Id.

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A related concern of Secretary Weinberger's is that information acquired by Israel through Mr. Pollard's activities could be used against Arab countries in a manner which would damage U.S. foreign policy. Secretary Weinberger again points to the raid against the PLO headquarters in Tunis as evidence of the uses to which the Israelis would put the information and the ensuing damage to U.S. policy. Specifically, Secretary Weinberger contends that U.S. relations with Tunisia have been injured because of the raid. Secretary Weinberger does not indicate, however, whether the damage, if any, which occurred to the bilateral relations was a result of the attack itself or the United States' failure to condemn it immediately. Again, assuming that the raid would have taken place regardless of Mr. Pollard's passing of information to the Israelis, Mr. Pollard may have minimized the damage to U.S.-Tunisia relations by reducing the number of Tunisian fatalities.

Over eighteen months have elapsed since Mr. Pollard began providing information on Arab countries to the Israelis. During that time, Israel has not attacked one Arab country. Israel has had a longstanding policy, which predates Mr. Pollard's involvement with them, of targetting terrorist bases located in

Lebanon. Those air strikes are the only exception to this proposition. If the information given by Mr. Pollard had altered the military balance, as Secretary Weinberger contends, Israel surely would have begun hostilities against Syria; in light of that country's provocative behavior in Lebanon.

III. Mr. Pollard's Access to Classified Documents

Mr. Pollard commenced his employment with the Department of Navy in 1979 as an intelligence analyst. He immediately attracted the attention of his superiors because of the depth of his analysis and his enthusiasm. Consequently, Mr. Pollard was given extremely favorable reviews and received several awards and promotions. In 1984, he was assigned to the Anti-Terrorist Alert Center, first as a watch officer and later as a research/analyst. From the beginning of his tenure until his arrest in November of 1985, except for a brief period in 1980, he held clearances up to the TOP SECRET level, which permitted him access to a variety of classified documents.

As stated in the United States' memorandum, analysts in the U.S. intelligence community operate on an honor system, in that the analysts voluntarily limit their access to only those documents which they perceive a need to inspect. Unlike the defense establishment, the intelligence community does not have a structured procedure establishing a "need to know" restricting the access of those possessing security clearances to specific categories of information. The primary reason for the more relaxed procedure in the intelligence community is a need for the

analysts and researchers to have a ready exchange of ideas and a general awareness of events in parts of the world other than those for which they are responsible. In the intelligence community, there is an overriding goal that analysis of world events not be made in a vacuum. To that end, Mr. Pollard would, as part of normal procedure, be permitted access to a wide range of classified documents.

Not only would Mr. Pollard have access to documents dealing with subjects outside his assigned specialty--the Caribbean--it was assumed, and indeed expected, that he would keep abreast of developments in other areas of the world. As a watch officer, Mr. Pollard was obligated to monitor all incoming information germane to terrorist activities anywhere in the world. Furthermore, Mr. Pollard's superiors came to rely on his expertise in the Middle East, gained through his prior assignments with the Navy and his willingness to take the time to absorb available information, such that he was called upon on many occasions to deliver explanations of the significance of events in the Middle East. Indeed, Mr. Pollard's superiors sent him as the official Navy representative to two high level inter-agency intelligence conferences dealing, in part, with developments in the Middle East. Because of his expertise in matters in that region, it was anticipated by Mr. Pollard and his superiors that he would be assigned to the Middle East desk as soon as a position was available, and that it therefore was imperative that he stay current on Middle East affairs.

In spite of its full awareness of the above, the United States has sought to depict Mr. Pollard as actively ransacking the intelligence libraries to provide information to Israel. Indeed, the United States intended that he have such access. While this distinction does not exonerate Mr. Pollard from the charge to which he has pled guilty, it clarifies that his access to classified documents regarding the Middle East was facilitated knowingly by the U.S. Government and was not the product of his contrivance.

IV. Mr. Pollard's Decision to Provide Information to Israel

At the outset, the Court should be aware, and the United States has not disputed, that Mr. Pollard did not join the U.S. intelligence community with the intent of providing information to Israel. Instead, as explained in Mr. Pollard's version of the offense, his decision to become an employee of the U.S. Navy was motivated by a desire to help the United States, to fight communism, and to have a meaningful impact on combatting terrorism. It was only after several years of frustration over aspects of U.S. policy that Mr. Pollard even began considering an approach to the Israelis. Finally, when events in the Middle East threatened the interests of both the United States and Israel, and when he felt that the United States was not providing to Israel that which was called for in the intelligence exchange agreements between the two countries, did he make an overture to the Israelis to provide them with that information. While one can scarcely condone the judgment to approach the Israelis and to

provide them with such information, Mr. Pollard's motivations were ideological, not mercenary. The corruptive effect of money on his conduct, fully discussed in his statement, came later. In the beginning and for five months thereafter, Mr. Pollard received no money for his activity. Moreover, as further testament to the non-mercenary motivation of his conduct, he was in service for six years before he made his fateful decision to help Israel. Lastly, it must be noted that his motives were probed by polygraphy and on this issue he was found to be telling the truth--he acted out of ideology first, not for money.

A. Mr. Pollard's Pro-Israel Viewpoint

Mr. Pollard has explained at length the circumstances of his upbringing and religion which inculcated a sympathy towards the State of Israel and which led him to provide information to it. His Jewish heritage, his trip to Israel, extensive reading of Jewish and Israeli history, and exposure to the attitudes of his family and friends naturally induced a strong pro-Israeli posture. Mr. Pollard's work experience only intensified this feeling towards Israel. As an analyst privy to classified information, he became aware of the true danger to Israel from its enemies in the Middle East and thought that the U.S. public underestimated or did not appreciate this danger. More importantly, Mr. Pollard thought that the U.S. intelligence community was deliberately withholding information from Israel that was vital to its security, even though formal intelligence exchange agreements provided that the information be shared with Israel. He learned of the existence of these exchange agreements

and their contours from his role as a delegate to several joint U.S.-Israel conferences at which information was exchanged pursuant to the agreements. Mr. Pollard, who had never hidden his feelings towards Israel, on several occasions challenged the failure of the U.S. to provide certain documents to the Israelis, and demanded an explanation from his superiors. Not only did his superiors refuse to provide any reason for the policy of withholding information, their replies often contained anti-Semitic overtones. On one occasion, when he protested the failure to turn over information regarding Soviet chemical warfare capabilities to the Israeli intelligence counterpart, Mr. Pollard was told that Jews are overly sensitive about gas because of their experiences during World War II.

B. Frustration over Terrorism

Concurrent with Mr. Pollard's growing alarm over the threat to Israel's very existence and the United States' reluctance to provide the information necessary to assist Israel was his increasing distress over the threat of terrorism to the United States. Mr. Pollard always has viewed himself as being a loyal son of both the United States and Israel. Accordingly, when events like the bombing of the Marine barracks in Beirut occurred, Mr. Pollard felt a rage both that the U.S. intelligence system failed to prevent such a tragedy and also that the United States failed to retaliate, even though it was well aware of the culprits behind the bombing. Because Mr. Pollard questioned the political resolve of the United States to take the actions necessary to combat terrorism effectively, he thought it

necessary to do all he could to assist the one country--Israel--that had demonstrated the fortitude to strike at terrorists. The fact that the major terrorist organization in the world, the Palestine Liberation Organization, targets its operations almost exclusively at Israel and the United States, rendered the decision more justifiable in his mind.

V. Mr. Pollard's Limitations on Delivery of Information

Consistent with Mr. Pollard's motivation in providing information to Israel were the limitations he imposed on the type of documents he would supply. He did not adopt the blind attitude that what was good for Israel was good for the United States; rather, he realized that the interests of Israel and the United States occasionally diverged. Mr. Pollard accordingly insisted, with the concurrence of the Israelis, that he would not divulge information concerning U.S. military or intelligence capabilities, or take any other action deemed to damage the U.S. national security. He provided only information he thought would benefit the defense of Israel, which fell into the following general categories: (1) the weapon systems of Arab countries; (2) the intelligence structures and capabilities of Arab countries; (3) daily message traffic concerning events in the Middle East; (4) analysis of Soviet weapon systems which would probably be delivered to Soviet client states in the Middle East; and (5) analysis of Arab leaders, political intentions and governmental stability.

Restrictions on the type of information which Mr. Pollard supplied are hardly consistent with the United States' depiction of him. One who sells state secrets solely for money is unlikely to anger his benefactors by denying them access to certain documents. Yet, Mr. Pollard flatly refused Rafi Eitan's demand

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On other occasions, Eitan asked for information regarding U.S. intelligence sources in Israel

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Eitan also demanded documents concerning U.S. knowledge of Israeli arms dealings with other countries, particularly China, and U.S. knowledge of Israeli intelligence efforts in the United States. Each time Mr. Pollard would not provide such documentation or information, despite Eitan's threats of re~~cr~~imination.

VI. Compensation

A. The Decision to Accept Compensation

The predominant theme in the United States' memorandum is that Mr. Pollard's decision to deliver information to the Israelis was motivated solely by the allure of money. Mr. Pollard does not contest that he received compensation for

his efforts to provide classified information to the Israelis; in all other respects the United States' memorandum is distortive of the actual sequence of events leading to that compensation.

As correctly pointed out in the United States' memorandum, Mr. Pollard was put in contact with Avi Sella in June, 1984 regarding a desire to aid Israel that Mr. Pollard had professed to a mutual friend. Sella asked that Mr. Pollard provide a sample of the type of information to which he had access. Mr. Pollard did so, without requesting or receiving any remuneration. Shortly thereafter, Mr. Pollard commenced providing documents to the Israelis on a regular basis, again without demanding or receiving compensation. Mr. Pollard and Sella only discussed compensation because Sella stated that standard practice dictated that all "agents" receive compensation for their activities. This policy probably reflected the Israeli's conviction that one who provided information for ideological reasons was less likely to stay the course than one who acted for the money. Indeed, when later Mr. Pollard offered to repay the Israelis for the money given him, his previous handler, Avi Sella, stated that the offer was unacceptable, because Rafi Eitan, the head of the operation, did not like his agents to discover morality.⁵

⁵ The United States attacks the veracity of Mr. Pollard's offer to reimburse the Israelis for the monies given him by claiming that he initially told authorities that he had conveyed his offer to Yossi Ya'gur by letter, but that he retracted the statement when asked to submit to a polygraph examination. The actual
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In the initial discussion between Mr. Pollard and Sella regarding money, a variety of options was explored. Mr. Pollard said that he was considering moving to New York so that his wife could further her career. Sella obviously was concerned because such a move would deprive the Israelis of a source of information; therefore, he offered to provide a job for Mr. Pollard's wife in the Washington area. The problem with such an approach was that it could force Mr. Pollard to involve indirectly his wife in his activities, which neither he nor the Israelis desired. Sella then offered to pay Mr. Pollard a sum which would compensate him for the income lost by his wife by remaining in Washington. Such a proposal was not implemented immediately, and only in November, 1984 did the Israelis and Mr. Pollard discuss and agree upon payments to him of \$1500 per month. Accordingly, Mr. Pollard provided information to Israel for five months without receipt of any compensation, and without any reasonable assurance that he would receive any in the future. Obviously, if the Israelis had decided to terminate the operation

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sequence of events was that Mr. Pollard told authorities that he had asked Irit Erb to write Yagur to offer repayment of the monies. The authorities became confused when Mr. Pollard said that he had not orally told Yossi of his offer and they assumed that he meant he had written a letter to Yossi instead of having Irit prepare the letter. This confusion was natural, since Mr. Pollard had written Yossi directly regarding shipments of arms to the Iranians to defend Kharg Island. When the subject came up during the course of an extensive polygraph examination, Mr. Pollard clarified the authorities' confusion. It is unfortunate that the Government attempts to accentuate this confusion, especially since it does not otherwise challenge the truthfulness of Mr. Pollard's offer of repayment to the Israelis.

in November, 1984, Mr. Pollard would have had no recourse against them. His willingness to risk the possibility of arrest for five months without any tangible and immediate financial reward hardly is consistent with the image painted by the United States of him as a cynical mercenary.

Even more importantly, the United States fails to mention that its polygraph operator specifically interrogated Mr. Pollard on his motivations for providing information to Israel. The polygraph operator found no deception when Mr. Pollard stated that he acted primarily for ideological reasons.

B. Mr. Pollard's Spending Habits

Perhaps, in recognition that it cannot dispute the results of the polygraph examination it conducted showing an ideological motivation for Mr. Pollard's actions, the United States focuses on Mr. Pollard's use of the money he received, rather than his desire for it. Again, Mr. Pollard does not challenge receipt of the money, nor the expenditure of it; however, he cannot accept the picture of corruption painted by the United States' memorandum.

Before he received any payments from the Israelis, Mr. Pollard and his wife had established a lifestyle which included almost daily lunches or dinners at restaurants in the Washington area, frequent purchases of clothes and books, and entertainment. On the other hand, he and his wife rented a modest apartment, owned a single, dated, nondescript automobile, and were paying off student loans. Mr. Pollard was not massively in debt, however, and he and his wife's spending did not exceed their

disposable income. Accordingly, he did not perceive the payments from the Israelis to be rescuing him from financial straits.

In November, 1984, Mr. Pollard and the Israelis agreed that he would be paid \$1500 per month, commencing immediately. The Israelis did not give Mr. Pollard any money for his efforts on their behalf for the previous five months. Mr. Pollard received \$1500 per month for about nine months, until the Israelis raised the amount to \$2500. Contrary to the implications in the United States' memorandum, Mr. Pollard did not demand a raise, but the Israelis offered (and he received) an increase because of the quality of the material being supplied by him. In all, Mr. Pollard received approximately \$25,000 in cash payments from the Israelis for the period from November 1984 through November 1985.

The effect of the money given by the Israelis was to upgrade Mr. Pollard's standard of living, not to transform him and his wife into profligate spenders. For example, Mr. Pollard and his wife went to nicer restaurants, selected more expensive clothing, and bought hardback, instead of paperback, books. Also, Mr. Pollard and his wife made trips to friends' weddings and social events that they would have eschewed previously. There is no contention that he or his wife have stashed any money in the United States or abroad or that they used the money for any illicit purpose.

Mr. Pollard and his wife also made two trips to Europe that were sponsored by the Israelis. The United States has delighted

in detailing the amount of money spent on those trips, yet the United States overlooks the fact that the trips were required by the Israelis, so that they could meet with Mr. Pollard outside the reach of U.S. law enforcement jurisdiction. When considering the extensive travel involved, the minimum costs associated with the trips would have run into the thousands of dollars. While Mr. Pollard did have luxurious accommodations on many segments of the trips, the Israelis urged that he enjoy himself to the maximum extent possible, particularly since on one trip he and his wife were on their honeymoon. Furthermore, the Israelis requested that Mr. Pollard rent a suite in one hotel in Paris, which cost over \$300 per day, so that meetings between them could take place there. When the Israelis found an alternate meeting place, Mr. Pollard immediately moved to a room costing \$75 per night. In addition, he and his wife travelled typically on coach fare, especially between the United States and Europe, and stayed overnight at modest establishments on many occasions.

The United States also emphasizes, as part of its characterization of Mr. Pollard as being motivated solely by lucre, that the Israelis promised him that they were putting \$30,000 per year into a Swiss bank account in the name of Danny Cohen. While the Israelis showed Mr. Pollard a passport in that name, they never exhibited any proof that the Swiss account actually existed or that they had deposited any money into the account. Furthermore, the Israelis admitted to Mr. Pollard that the account, if it indeed existed, would be accessible by him only on the countersignature of an appropriate Israeli agent.

Accordingly, Mr. Pollard had little, if any, expectation of receiving funds from this source, and indeed, never obtained money from the account. Furthermore, the United States has determined that the account was devoid of funds. It is absurd, therefore, for the United States to intimate that the bank account drove Mr. Pollard to further efforts on behalf of the Israelis.

VII. Mr. Pollard as a Recidivist

In its sentencing memorandum, the United States discusses several other episodes in which Mr. Pollard divulged classified information to other persons allegedly not entitled to access to the information. Mr. Pollard does not contest that he provided information to such persons; however, he does take issue with the version offered by the United States of the circumstances surrounding the delivery of information. It is important for the Court to realize that the United States almost invariably relies on the word of the recipients of the information when discussing the incidents. With good reason, the credibility of those recipients is open to substantial doubt.

In no instance did the recipient of the information voluntarily come forward immediately to disclose Mr. Pollard's conduct to the proper authorities. In a few cases, the recipient, in what is reminiscent of a "race to the courthouse," approached the U.S. investigators after news of Mr. Pollard's arrest became known. These belated "confessions" can be attributed solely to the recipient's fears that Mr. Pollard would

disclose the delivery of information and therefore subject them to criminal charges. Those recipients accordingly thought it preferable to provide their version of the incident first. In other cases, the United States learned of the passing of information only after notified of the incident by Mr. Pollard. Only when summoned by the investigators did those persons provide an account of the passing of information.

In spite of the tardiness with which the recipients of information from Mr. Pollard provided U.S. authorities with their version of the transaction, the United States did not see fit to charge any of those individuals with violations of the espionage laws. Even stranger, the United States did not even subject the recipients to a lie detector test to ascertain either the accuracy of their statements or their motives in seeking and receiving information from Mr. Pollard. By contrast, the United States examined Mr. Pollard thoroughly while he was connected to a polygraph and is satisfied with his answers. Nevertheless, the United States insists on providing a description of the incidents which relies primarily on the version given by the recipients of the information, rather than Mr. Pollard's polygraph-tested explanation.

A. Peter Mole

Mole was an officer of the Australian Navy assigned to act as liaison officer with the United States pursuant to an exchange of information agreement. Because Mole was an officer of one of the United State's strongest allies and assigned specifically to receive classified information on behalf of his government, he

was permitted to have access to information passing through the Department of Navy intelligence center. On several occasions, Mr. Pollard was instructed by his superiors to ensure that Mole be given any documents he requested, regardless of the type or secrecy level of the document. Even though many of the documents contained the notation "NOFORN," which forbids dissemination to foreign governments, Mr. Pollard's superiors ordered complete access for Mole, and justified the order by declaring that Mole was to be considered a U.S. employee. Accordingly, when Mole asked Mr. Pollard for information relating to U.S.-New Zealand affairs, Mr. Pollard saw no impropriety in providing a document responsive to the request. Indeed, investigators later not only acknowledged the extent to which Navy personnel routinely gave Mole access to restricted classified information, but they devoted a lengthy debriefing session to discussing the latent security problem of permitting British, Canadian and Australian liaison officers to have carte blanche in obtaining classified documents.

B. Kurt Lohbeck, Joe Harmon and Laura Caro

Neither Lohbeck, Harmon nor Caro possessed security clearances, and Mr. Pollard does not contend that his divulging of classified information to them was in any way sanctioned by his superiors. Mr. Pollard's actions were not, however, examples of recidivist behavior, but rather reflected an unfortunate desire to impress his friends with the importance of his work and his knowledge of areas of interest to them. Interestingly, the United States has not contended that those individuals who

received information from Mr. Pollard passed it on to unfriendly countries or used it in a manner detrimental to the national security. Indeed, the United States' memorandum is devoid of any claims of damage arising from the passing of information to those persons. While this lack of damage does not condone the action, it does justify a more restrained punishment.⁶

The United States also attempts to assign several sinister motives to what basically was a simple memory lapse. Mr. Pollard truly was unable to remember the details surrounding the disclosure of information to the above individuals. This lack of recall signifies neither a cavalier attitude towards classified information nor a realization that the disclosures were inconsistent with his motivations in passing information to Israel. Instead, Mr. Pollard's temporary memory lapse can be attributed simply to his focus on the aspects of his dealings with the Israelis. Given his overriding desire to provide all information he could give regarding the extent of his activities

⁶ In Lohbeck's case, little damage could have occurred. As a recognized liaison to the Mujaheddin, Lohbeck not only had access to several key U.S. officials, including Robert McFarlane, but also to intelligence reports. On several occasions, Lohbeck showed Mr. Pollard classified documents with security caveats so high that he was unaware they existed. Mr. Pollard therefore thought it acceptable to provide Lohbeck with relatively less sensitive information concerning events in Afghanistan. Mr. Pollard provided such information in an effort to assist Lohbeck in crossing the border into Afghanistan and to further arms sales that they were attempting to arrange. For unexplained reasons, investigators did not seek details regarding Lohbeck's ties with U.S. officials or the documents shown Mr. Pollard by Lohbeck; indeed, on two occasions an investigator involved in Mr. Pollard's debriefing specifically instructed him to cut short narratives concerning those topics.

on behalf of the Israelis, it is not unnatural that he would lose track of unrelated incidents. Furthermore, the United States has not suggested that he was in any way deceitful regarding his answers once he recalled the events on which he was being questioned.

C. The South African Affair

While he was still a graduate student, Mr. Pollard struck up an acquaintance with a military attache at the South African embassy. This relationship, begun at a reception at the South African embassy, continued through correspondence and occasional phone calls. Because Mr. Pollard did not possess a security clearance at this point, the South African's motivation in speaking to him could be attributable to several innocuous factors, including an appreciation of his knowledge of South African affairs, rare among Americans, a desire to promote friendly relations with Americans, and perhaps less lofty reasons such as an indulgence of his craving for ego gratification.

When Mr. Pollard commenced his employment with the Department of the Navy, he thought it opportune to utilize his contacts with the South Africans. At that time, relations between South Africa and the United States were strained, and intelligence exchanges severed, because of the expulsion of the U.S. military attache from South Africa for espionage activities. Because the absence of information from South African intelligence services left a hole in the U.S. intelligence gathering network, Mr. Pollard thought it imperative to establish a link with the South Africans. Before making any overtures to

the South Africans, however, he first obtained the consent of his
superiors.

R78

R78 (continued)

VIII. Mr. Pollard's Post-Arrest Conduct

The United States' description of the events which took place from November 18, 1985 through Mr. Pollard's arrest on November 21 are correct. Mr. Pollard deliberately misled U.S. investigators as to the nature of his activities on behalf of Israel, in an effort to permit his Israeli handlers to escape. Mr. Pollard does not ask the Court to excuse this conduct, but to recognize that this was the result of his desire to reciprocate the assurances of his handlers that in a crisis they would assist him by protecting them. Such gullibility is understandable when one appreciates the ideological motivation for Mr. Pollard's conduct. Indeed, this ideological motivation supplanted his instinct for personal survival during those critical days and hours prior to his arrest. In that time, Mr. Pollard never made a break for it until he had confessed several times to the act of espionage (albeit without identifying his handlers); he telegraphed his every move to his interrogators; he consented to warrantless searches of his apartment; and he drove amateurishly to a promised haven that never existed at the Israeli Embassy. Of course, when Mr. Pollard was finally arrested he never attempted to bargain his situation for that of his handlers. If

his passing of information to the Israelis had been driven solely by money, as the Government persists was the case, Mr. Pollard most assuredly would have tried, upon his arrest, to obtain a bargain in return for identification of his confederates. This did not happen. This is not a condonation of this conduct, but rather an explanation that serves to underscore the profound ideological commitment of Mr. Pollard to his conduct and, concomitantly, the utter naivete he demonstrated at a time when his life was collapsing around him.

A. Mr. Pollard's Cooperation with the Government and its Value.

The Court should also weigh heavily the cooperation extended by Mr. Pollard beginning three months after his arrest and well before a plea agreement was executed. Without the promise of any leniency by the United States, except its commitment not to ask for a life sentence or a specific term of years but only for a "substantial" period of incarceration, Mr. Pollard began providing full details of his activities on behalf of the Israelis. The ensuing debriefings consumed several hundred hours, during which Mr. Pollard provided information to his U.S. interrogators on the following subjects:

R79

R79 (continued)

R79 (continued)

R79 (continued)

Mr. Pollard is continuing to assist in the ongoing criminal investigation through interviews and grand jury testimony. For example, he has appeared before the grand jury investigating the role of Avi Sella twice in the last month to detail Sella's direct request and receipt of classified information from him.

Because of Mr. Pollard's candor in describing the extent of the information passed to Israel, the United States has been able to gauge more accurately the extent of any damage caused by Mr. Pollard's actions and to take effective countermeasures. In addition, his forthrightness has enabled the United States to confront the Israelis regarding the truth of the statements they submitted to U.S. investigators.

Mr. Pollard's cooperation also has extended beyond identifying the scope of his activities for Israel. A prevalent concern in the U.S. intelligence community was how he could pass documents to the Israelis for eighteen months without detection. Mr. Pollard not only supplied details of his ability to circumvent security measures at his workplace and the

intelligence libraries, he also provided advice on how best to rectify those holes in the security net. For instance, Mr. Pollard explained how modems, which permit communication with a computer by phone, represent a severe security problem since the high speed transmissions could be intercepted by enemy agents acting outside secure facilities, who could quickly access massive amounts of classified information. He also discussed how secretion of a single floppy disk from a secured area could be as damaging as the removal of hundreds of classified documents. In addition, he advised investigators that the State Department Intelligence and Research Bureau is probably the optimum location for an enemy spy, since analysts at the Bureau routinely receive hundreds of intelligence reports weekly as part of their duty of summarizing such reports for reading by the Secretary of State.

Several times during his marathon debriefings officials of various intelligence agencies commented favorably on the ideas put forward by Mr. Pollard. Others assured him that his recommendations had been implemented.

Mr. Pollard's cooperation with investigators also was so impressive and his previous employment evaluation so favorable that his questioners began to take the interrogation beyond the realm of his activities for Israel. For example, after Mr. Pollard's debriefing had terminated, he was brought back from prison to give various intelligence officers a briefing

R80

The United States concedes that Mr. Pollard was "candid and informative in describing his wrongdoing," and that the

investigation of the Israeli involvement in the matter could not have progressed as far as it did without his assistance. The Government's description of Mr. Pollard's cooperation, however, is lame in the extreme. Without the benefit of the detail which is supplied above, there is no way the Court could possibly discern the level, depth and value of Mr. Pollard's cooperation. By failing to give Mr. Pollard proper credit for his cooperation, the Government has not honored its part of the plea bargain. Instead, it offers the shrillness of an overstated argument to support its claim for a substantial sentence. This is not fair. If the Government wishes to attack Mr. Pollard's honesty, it is free to do so, but not at the expense of failing to speak as candidly and openly about his valuable cooperation as it has about his criminal conduct.

B. Mr. Pollard's Conduct and Treatment in Prison

In addition to cooperating extensively with the prosecutors and officials of the U.S. intelligence community, Mr. Pollard has displayed a compliant attitude towards prison and jail officials. Mr. Pollard has been a model prisoner, even in the face of disturbing patterns of harassment. Since his arrest, Mr. Pollard has been kept in administrative detention, resulting in isolation from others, and curtailed exercise, phone, and visitation privileges. This detention has not been imposed because of any perception that Mr. Pollard is a discipline problem, but rather because of a concern that other prisoners would cause harm to him. Because of the nature of the offense to which Mr. Pollard has pled guilty and because of his Jewish background, prison

officials fear that he is a target for several prison groups. In particular, Mr. Pollard has received threats from the Aryan Brotherhood, which is renowned in the prison system for its anti-Semitism.⁸ In spite of this, Mr. Pollard has requested on numerous occasions that he be put in less restrictive surroundings so that he may enjoy the same privileges as other prisoners, even though such a move would expose him to greater danger.

An added burden for Mr. Pollard is that several of his guards have displayed a bigotry similar to that of the Aryan Brotherhood, as revealed not only in derogatory remarks to him but also in unusually harsh treatment. For example, on one occasion, Mr. Pollard's jailors at Petersburg, Virginia told him he was going home to Israel, then chained him by the throat, waist, and feet, and placed him in a van for transport to the federal prison at Lewisburg, Pennsylvania. At the beginning of the lengthy trip, the jailors delighted in taunting Mr. Pollard with anti-Semitic remarks. At Lewisburg, Mr. Pollard was treated erroneously as a discipline problem, with further restrictions on visitation and phone privileges. In addition, during the brief visit that prison officials permitted him to have with his wife,

⁸ On three separate occasions, Mr. Pollard received warnings from other inmates that the Aryan Brotherhood has targeted him for assassination. Prison officials, respectful of the justifiable pride which the Brotherhood takes in fulfilling its threats, has attempted to monitor known Brotherhood members in the prison. According to inmates, however, the Brotherhood has promised to put a "sleeper," or a clandestine member of the group, in the prison to carry out its avowed execution.

his hands were cuffed and placed in a box which was designed to tighten the handcuffs if he attempted to move his hands. Excessive movement of the hands in the box could result in a broken wrist. Even though intercession by the U.S. Attorney's Office provided a reprieve from this treatment, its pervasiveness, grounded in bigotry and the expectable hostility of our society to spies, combine to make Mr. Pollard's incarceration especially brutal.

C. Mr. Pollard's Physical, Emotional, and Judgmental Deterioration

It is not surprising that any person incarcerated for more than a year will suffer breakdowns in health, both physical and mental. It is also the case that his judgment will not always be as acute as in other less stressful circumstances.

In Mr. Pollard's case, this deterioration has been rapid and profound. It is compounded by the fact that his wife, Anne Henderson-Pollard, has, to his way of thinking, suffered even more than he--and he has been able to do nothing about it. He has witnessed her decline in health, as evidenced by the loss of more than sixty pounds, an excruciatingly painful surgery, numerous endoscopic examinations, extreme dependence on pain medication, and a marked deterioration in her morale. She has been subjected to the onslaught of media people, each of whom carry a special message of why it is important for her and/or her husband to speak to them.

Both Mr. and Mrs. Pollard have lapsed in this regard and, against better judgment and advice, have spoken to the press. Hopefully, this will be seen as an aberration, nothing more.

Rather, these are the acts of a person who, notwithstanding valuable cooperation, has been held up to vilification and scorn, whose motives, although verified as ideological, have been condemned as mercenary, whose lifestyle, although demonstrably modest, has been described as profligate, and whose personal integrity, although tested severely during his cooperation, has been impugned. It is reflective of the desperation that grips these people in this, the lowest moment of their lives.

Mr. Pollard's incarceration and its special debilitating features are discussed above at p. 43. Here, we wish the Court to understand the special torture this situation represents. A family is destroyed, a marital relationship severed, the daily threat of bodily harm, and the specter of long-term imprisonment and isolation all coalesce in this case with a force far greater than usual. This is because no degree of intellectualizing can correct the crushing realization that Mr. Pollard may have no life before him and this notwithstanding that he feels he has betrayed no one, and never intended or did harm to the United States.

IX. Possibility of Parole

A factor which the Court should consider in imposing sentence is the likelihood of whether Mr. Pollard will be paroled at any time during his incarceration. In this instance, given the nature of the offense, parole is highly improbable. The sentencing guidelines call for any person convicted of espionage to serve at least 100 months, or eight and one-third years in

prison, before he is even considered for release on parole. See 28 CFR §2.20. Furthermore, there is no guarantee that the Parole Board would release Mr. Pollard on parole even after he served 100 months, especially since, to the best of our knowledge, the Parole Board has not paroled one person convicted of the espionage laws in the past ten years. The Court accordingly could reasonably presume that Mr. Pollard will have to serve fully any sentence imposed by it, less any reduction for good behavior. Applying this measure, in any sentence in excess of five years, Mr. Pollard will likely serve fully two-thirds of the high end of any sentence imposed by the Court. See 18 U.S.C. 4206 (d).

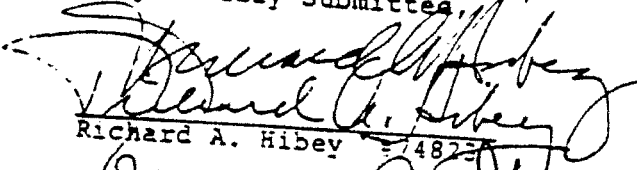
Conclusion

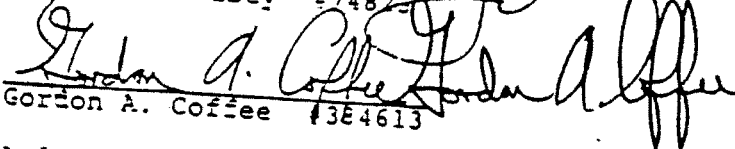
Since the codes of Hammurabi, the laws have evolved to a simple but profound proposition, viz. that punishment should fit the crime. Enlightened sentencing principles in today's jurisprudence look beyond the sensational aspects that often accompany the establishment of guilt in favor of measuring the severity of the offense. This is especially true where the defendant has pled guilty to the crime.

In this case, notwithstanding its sensational features, where an enormous volume of information was transmitted improperly, it was done without the intent to, and without the result of, damaging the nation's security. This case is lacking the essential ingredient that would make this a heinous crime: the beneficiary was not, and is not, the enemy, but one of our

closest friends. By this, we do not argue that what Mr. Pollard did was right, or that it does not merit punishment. However, the punishment must be appropriate to the actual severity of his criminal conduct. Applying that measure, no harm has come to the country. Accordingly, Mr. Pollard's sentence ought to reflect this indisputable fact.

Respectfully Submitted,


Richard A. Hibey #74823

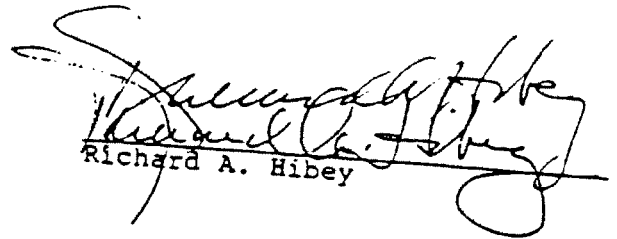

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was delivered to Charles S. Leeper, Esq. and David Geneson, Esq., Assistant U.S. Attorneys, this 27th day of February, 1987 by depositing a copy with the Court Security Officer, pursuant to the Protective Order dated October 24, 1986.


Richard A. Hibey